THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	ID#: 0810007161
	)	
JOSHUA STEPHENSON,	)	
Defendant.	)	

ORDER

Upon Defendant's Motion to Dismiss Current Counsel and for the Court to Appoint New Counsel – DENIED

1. On November 10, 2008, Defendant was indicted for Stalking, Terroristic Threatening, and Harassment. On March 6, 2009, at appointed counsel's request, the court ordered that Defendant undergo a psychiatric examination.

2. On June 4, 2009, a forensic psychiatrist attempted to carry-out the court's order, but Defendant refused to cooperate. By report dated June 11, 2009, the psychiatrist informed the court that Defendant suffers from mental illness. Defendant was admitted to Delaware Psychiatric Center from 2007 to 2008 and he was treated then by the reporting psychiatrist. The psychiatrist also believed that Defendant is refusing to take prescribed medication for his mental illness. Taking Defendant's history and his behavior into account, the psychiatrist found "reason to

be concerned about [Defendant]'s competency related abilities." Due, however, to Defendant's refusal to obey the court's order to undergo a psychiatric evaluation, the psychiatrist could not form an opinion to a reasonable degree of medical probability.

3. While the psychiatrist had reason to be concerned about Defendant's incompetence, as explained in the preceding paragraph, the psychiatrist also found some evidence pointing toward Defendant's competence. Defendant seems to understand some of what is going on, and he is attempting to assert his right to a "speedy trial," as presented below.

4. On June 1, 2009, a few days before he refused to undergo the ordered psychiatric evaluation, Defendant filed his own "Motion to Dismiss Current Counsel and for Court to Appoint New Counsel." For the most part, the motion is canned. The part of the form that is in Defendant's actual hand begins:

> a. A Psychiatric Evaluation that was motioned for against my orders dose [sic] not hinder a Patient Bill of right to Speedy trial-not dose [sic] a fired attorney intafears [sic] with a Motion for dismissal.

5. Taking the charges and Defendant's history into account, along with the other things presented in the Delaware Psychiatric Center report, Defense

counsel cannot be faulted for asking for a psychiatric evaluation. While certain matters relating to the defense are under defendant's control, such as the decision to plea guilty or not guilty, to testify or not testify, etc., most defense matters are under defense counsel's control. Defense counsel is obligated to request a psychiatric evaluation when there is a good faith reason to question a defendant's competence to stand trial.[1] Thus, Defendant has not shown reason to dismiss his current counsel, much less to appoint new counsel. To the contrary, Defendant is acting in a way that demonstrates his on-going need for his current counsel.

6. If Defendant is competent, as he says he is, and if Defendant wants a speedy trial, as he says he does, then Defendant will act like he is competent and that will advance his trial date. So far, however, Defendant is behaving in a way that supports concern about his competence, and which undermines his position here.

7. By copy of this order, the court is directing the Delaware Psychiatric Center to take whatever steps it deems necessary, short of involuntary medication, to successfully carry-out the pending order that Defendant shall undergo a psychiatric/psychological evaluation to determine his competence to stand trial and his mental status at the time of the alleged offense.

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[1] *See generally*, *Red Dog v. State*, 625 A.2d 245, 247 (Del. 1993) (citing DLRPC 1.14).

8. Meanwhile, for the foregoing reasons, Defendant's motion to dismiss counsel and for the court to appoint new counsel is **DENIED**.

IT IS SO ORDERED.

Date: June 26, 2009 /s/ Fred S. Silverman
Judge

FSS:mes
cc: Prothonotary (Criminal)
Maria T. Knoll, Deputy Attorney General
Beth D. Savitz, Assistant Public Defender
Joshua Stephenson, Defendant